

LENORA PHILSON - 3/29/2019

<p style="text-align: center;">1</p> <p>1 UNITED STATES DISTRICT COURT WESTERN DISTRICT OF ARKANSAS 2 TEXARKANA DIVISION 3 CRAIG SHIPP PLAINTIFF 4 CASE NO. 4:18-CV-04017-SOH 5 V. 6 7 KIMBERLY HOFFMAN, et al. DEFENDANTS 8 9 ***** 10 ORAL DEPOSITION 11 OF 12 LENORA PHILSON 13 MARCH 29, 2019 14 VOLUME 1 15 ***** 16 ORAL DEPOSITION OF LENORA PHILSON, produced as a 17 witness at the instance of the PLAINTIFF, CRAIG SHIPP, 18 and duly sworn, was taken in the above-styled and 19 numbered cause on the 29th day of March, 2019, from 20 12:58 p.m. to 1:59 p.m., before LEICA TURNER, a 21 Certified Shorthand Reporter in and for the State of 22 Texas, reported by machine shorthand, at the offices of 23 Leigh & Associates Court Reporting, 3930 Galleria Oaks 24 Drive, Suite 159, Texarkana, Texas, pursuant to the 25 Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.</p>	<p style="text-align: center;">3</p> <p style="text-align: center;">I N D E X</p> <p>1 WITNESS: LENORA PHILSON</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">PAGE</p> <p>Appearances 2</p> <p>Changes and Signature 46</p> <p>Reporter's Certificates 48</p> <p>Examination by Mr. Franseen 5</p> <p>Examination by Ms. Odum 41</p> <p>Examination by Mr. Franseen 44</p>
<p style="text-align: center;">2</p> <p>1 A P P E A R A N C E S 2 FOR THE PLAINTIFF CRAIG SHIPP: 3 MR. DEREK S. FRANSEEN 4 WALSH & FRANSEEN 5 200 East 10th Street Plaza 6 Edmond, Oklahoma 73034 7 Phone: 405.843.7600 8 Fax: 405.606.7050 9 dfranseen@walshlawok.com 10 FOR THE MEDICAL DEFENDANTS: 11 MS. MICHELLE BANKS ODUM 12 HUMPHRIES, ODUM & EUBANKS 13 1901 Broadway Street 14 Little Rock, Arkansas 72206 15 Phone: 501.420.1776 16 michelle@humphrieslaw.net 17 18 FOR THE ADC DEFENDANTS: 19 MS. ROSALYN MIDDLETON 20 ASSISTANT ATTORNEY GENERAL 21 CIVIL DEPARTMENT 22 323 Center Street 23 Suite 200 24 Little Rock, Arkansas 72201 25 Phone: 501.682.8122 Fax: 501.682.2591 rosalyn.middleton@arkansasag.gov</p>	<p style="text-align: center;">4</p> <p style="text-align: center;">E X H I B I T I N D E X</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">PAGE MARKED</p> <p>EXHIBIT NO. DESCRIPTION</p> <p>1 18</p> <p>Email, 2/16/16, from Lenora Turner to Stephen Arnold, Subj: Resident Craig Shipp (Bates CCS-Requests Complaints Other 0018)</p> <p>2 18</p> <p>Medical Restrictions/Limitations/ Special Authorization(s) (Bates CCS 788)</p> <p>3 29</p> <p>Email between Jeffrey Stieve and Lenora Turner and Kim Hofmann Re: Resident Craig Shipp (Bates CCS-Requests Complaints Other 0024 - 0025)</p> <p>4 32</p> <p>Email String between Lenora Turner and Stephen Arnold, 2/16/16, Re: Resident Craig Shipp (Bates CCS-Requests Complaints Other 0019)</p> <p>5 44</p> <p>Request Form (Bates CCS-Requests Complaints Other 0026)</p>

LENORA PHILSON - 3/29/2019

21

1 Q. The warden says refer to Medical and says he
2 sent it to Medical and you received that document. What
3 are you supposed to do with that?

4 A. Okay. That's a conversation I would have with
5 the warden.

6 Q. Okay. What kind of conversation would you
7 have?

8 A. Okay. First of all, I would have to look into
9 the record to see exactly what was going on as far as
10 the shoes and what the doctor had documented. So I know
11 that I would go in first of all and look at the record
12 and see exactly is there a medical necessity, what the
13 doctor had said about the shoes, about the foot, if the
14 documentation is there. And no matter what the
15 documentation says, I'm still going to follow back up
16 with the warden on that request because that's something
17 we did routinely is follow back up. Any time he gives
18 me something, there was always close follow-up.

19 Q. How would you follow up?

20 A. It all depends. I mean, sometimes I will talk
21 to him, I'd go to his office quite a bit, I would
22 e-mail, I would call, sometimes he would come to my
23 office.

24 Q. So you would agree before February 16, 2016,
25 you had not notified Mr. Warden that Mr. Shipp needed

22

1 orthotic shoes?

2 A. I'm not agreeing to that. I just said I can't
3 recall.

4 Q. You don't have any memory of doing that?

5 A. I don't recall.

6 Q. Do you recall looking at Mr. Shipp's records
7 prior to February 16, 2016?

8 A. Looking at his records?

9 Q. To see whether he needed orthotic shoes,
10 whether they were approved or not?

11 A. Prior to February 16th?

12 Q. Yes.

13 A. I don't remember, sorry.

14 Q. On Exhibit 2 there, is that the document that
15 would be filled out by a doctor approving a medical
16 device?

17 A. It appears to be.

18 Q. So that would have to be filled out by a
19 doctor in order for a medical device to be approved to
20 come into the facility by Medical and the warden?

21 A. It looks like that is one form.

22 Q. And so in order for a resident to get their
23 medical prescribed device, that document had to be
24 filled out, you would have to be notified, and the
25 warden would have to approve it?

23

1 A. Sounds pretty accurate.

2 Q. Is there anything prohibiting a doctor from
3 filling out that type of form prior to an intake
4 physical if they have an encounter with the resident?

5 A. I can't answer that. That would be up to the
6 physician.

7 Q. Why is it up to the physician whether they can
8 fill out a form or not?

9 A. That would be their discretion.

10 Q. So it's at their discretion so there's nothing
11 prohibiting them from using their discretion in filling
12 out that form approving a device if it's brought to
13 their attention?

14 A. I wouldn't think so.

15 Q. You wouldn't want a policy in place that
16 prohibits them from using their discretion, would you?

17 A. I don't make the policies.

18 Q. But as an administrator there, you want to
19 have policies in place that are in the best interest of
20 the residents regarding their healthcare?

21 A. Well, the policies are in place and that's
22 what we do, follow the policy.

23 Q. So is there a policy that you're aware of that
24 prohibits a doctor from exercising their discretion in
25 filling out that form during an encounter once they're

24

1 aware that a resident does not have their medically
2 prescribed device?

3 A. I'm not aware of any policies.

4 Q. Do you agree that a nurse can't notify you
5 that a resident needs a outside medical device without a
6 doctor filling out such an order?

7 A. Can you repeat that question?

8 Q. Is there anything regarding the policies and
9 procedures that prohibits a nurse from notifying you
10 that a resident needs an outside medically prescribed
11 device without a doctor's order?

12 A. I don't recall anything in the policy about
13 that.

14 Q. Do you know whether the nursing staff follows
15 such a policy in February 2016 in that manner?

16 A. Follows such a policy about what? I'm sorry.

17 Q. About not notifying the health service
18 administrator until the doctor fills out an order.

19 A. Your question was is there anything in the
20 policy?

21 Q. Do you know whether the nursing staff would
22 have followed that policy, that they would wait until a
23 doctor filled out an order before they notified the HSA
24 regarding the need for an outside device to be
25 approved?

6 (Pages 21 to 24)

LENORA PHILSON - 3/29/2019

33

1 an e-mail -- oh, gosh. It looks like an e-mail from
2 Mr. Kevin Murphy to Mr. Arnold that talks about unless
3 he has an issue with it, we need to allow his special
4 shoes to be sent into the unit. And then the middle
5 part of it is from Mr. Arnold to, it looks like to
6 Whitney Walker who was in -- she was the one over the
7 property, I believe, at that time. I can't be clear.
8 But it looks like he's allowing the shoes to be sent
9 into the unit and then he wanted to be notified when
10 they arrived.

11 Q. Anything else in there?

12 A. No, that's about it.

13 Q. So this is Exhibit 4, CCS Requests Complaints
14 Other 19. What are you saying "will do" to up there on
15 the e-mail above it?

16 A. May I?

17 Q. Is that with regards to him asking for the
18 family to be notified if they could send the shoes in?

19 A. I can't verify that because this goes from
20 10:33 a.m. to 1:54 p.m.

21 Q. So your response isn't until 1:54 p.m.?

22 A. I don't know what I'm saying "will do" to.
23 That was the question. I don't know what that was in
24 response to.

25 Q. But you're responding to his e-mail that

34

1 starts with -- what is the first sentence there?

2 A. You said to "his." Will you clarify that?
3 Are you talking about --

4 Q. Yeah, what's the sentence -- what is he saying
5 to the sentence that you -- in the first sentence of the
6 e-mail you're responding to?

7 A. You mean Mr. Arnold?

8 Q. Yeah.

9 A. "Please have his family send in special shoes
10 and send to my attention."

11 Q. And you respond to that "will do"?

12 A. And then it says, "Please advise when they
13 arrive."

14 Q. Okay. So those are the two sentences on that
15 e-mail; is that correct?

16 A. Yes.

17 Q. And you said "will do" in response to that?

18 A. It has "will do" at the top.

19 Q. In response to that e-mail?

20 A. I can't say it's in response to that.

21 Q. What do you think it's in response to if it's
22 not to that e-mail?

23 A. I can't say what it's in response to.

24 Q. Okay. Do you think that if he told you to
25 notify the family to send the shoes in, you would have

35

1 notified them?

2 A. You know what, I can't -- I can't speak on
3 that either. I can't -- I can't speculate.

4 Q. Okay. Does that seem reasonable that you
5 would have notified the family, hey, send the shoes in,
6 they've been approved?

7 A. Because when shoes arrive to the unit, they
8 don't come to Medical.

9 Q. They have to be approved by the warden?

10 A. Right.

11 Q. Don't you think the family would want to wait
12 until the warden approves to send them in?

13 A. I can't -- I don't know what the family would
14 want. I can't speak on what the family would want.

15 Q. The family has to follow policy and procedures
16 of the facility that their family member is in, right?

17 A. You said the family would have to follow
18 policy and procedure?

19 Q. Right. They have to follow policy and
20 procedure before something can get admitted?

21 A. That would be a conversation that the warden
22 would have.

23 Q. Okay. So it's the warden's duty to contact
24 the family?

25 A. I haven't spoken with any family.

36

1 Q. So you didn't -- you didn't ever contact the
2 Shipp's?

3 A. I haven't spoken with any family.

4 Q. Do you have any recollection of speaking with
5 the warden prior to this February 16, 2016, email?

6 A. Regarding?

7 Q. Regarding Mr. Shipp's orthotic shoes?

8 A. I don't recall.

9 Q. Do you have any recollection of any nurses
10 notifying you prior to February 16, 2016, regarding
11 Mr. Shipp's orthopedic orthotic shoes?

12 A. Prior to the 16th?

13 Q. Yes.

14 A. I don't. I don't recall.

15 Q. Same question as with the nurse, do you recall
16 any doctors notifying you prior to the 16th?

17 A. I don't necessarily remember prior to the
18 16th. Sorry.

19 Q. What is Malvern? What type of facility is
20 that?

21 A. Malvern has two facilities. Which one are you
22 referring to?

23 Q. Well, is there one that has a better medical
24 unit?

25 A. A better medical unit?

9 (Pages 33 to 36)